



# PORTER WRIGHT MORRIS & ARTHUR LLP

Attorneys & Counselors at Law

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May 4, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: **Renewal Petition Under 37 C.F.R. 1.47(a) for:**

Application No.: 10/828,836  
Inventors: Michael J. Neal, et al.  
Filed: April 21, 2004  
Title: GAS CYLINDER WARMER WITH VARIABLE  
WATTAGE SELF REGULATING HEATER  
Atty. Docket No.: 1505800-050745

Dear Sir:

The enclosed renewed petition is filed in response to the Decision on Petition mailed March 8, 2005 regarding the above-identified patent application. Enclosed are the following:

- (1) Renewal Petition under 37 C.F.R. 1.47(a) with attached Statement of Facts by Domenic Federico, Statement of Facts by Richard M. Mescher, and Assignment;
- (2) Authorization Re Deposit Account (in duplicate) for any resulting fees; and
- (3) Certificate of Filing by Mail.

We also have enclosed our postcard receipt, which we ask that you acknowledge and return to us.

Very truly yours,

A handwritten signature in black ink that reads "Richard M. Mescher".

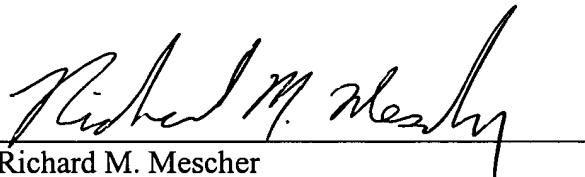
Richard M. Mescher

Enclosures



**CERTIFICATE OF FILING BY MAIL**

I certify that this copy of the Renewal Petition Under 37 C.F.R. 1.47(a) with attached Statement of Facts by Domenic Federico, Statement of Facts by Richard M. Mescher, and Assignment, and Authorization Re Deposit Account (in duplicate), are being deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, as first class mail, postage prepaid, on this 4<sup>th</sup> day of May, 2005.

  
\_\_\_\_\_  
Richard M. Mescher  
PORTER, WRIGHT, MORRIS & ARTHUR LLP  
41 South High Street  
Columbus, Ohio 43215-6194

Re: Application No. 10/828,836



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Inventors: Michael J. Neal, et al.

Title: GAS CYLINDER WARMER WITH VARIABLE  
WATTAGE SELF REGULATING HEATER

Application No.: 10/828,836

Filed: April 21, 2004

Attorney Docket No.: 1505800-050745

Commissioner for Patents  
Mail Stop Missing Parts  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AUTHORIZATION RE DEPOSIT ACCOUNT**

Sir:

Please charge any required small entity fees for the above-referenced application to our  
Deposit Account No. 16-2326.

A duplicate copy of this paper is provided.

Respectfully submitted,

Dated: May 4, 2005

By: *Richard M. Mescher*  
Richard M. Mescher  
Porter, Wright, Morris & Arthur, LLP  
41 South High Street  
Columbus, OH 43215  
(614) 227-2026



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Michael J. Neal, Doug Dietz, and Daniel R. Smith

Serial No.: 10/828,836

Filing Date: April 21, 2004

Title: "GAS CYLINDER WARMER WITH VARIABLE  
WATTAGE SELF REGULATING HEATER"

Examiner: tbd

Art Unit: tbd

Attorney Docket: 1505800-050745

**RENEWAL PETITION UNDER 37 C.F.R. 1.47(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Co-Inventors Michael J. Neal and Doug Dietz hereby request the Commissioner reconsider the Decision on Petition mailed on March 8, 2005 and accept the filing of the above-identified U.S. Patent Application by other than all of the inventors.

The present application for patent has three co-inventors. Two of the co-inventors joined the present application while one of the co-inventors refused to join the present application. A Statement of Facts signed by Domenic Federico, president/CEO of BH Thermal Corporation and a Statement of Facts signed by myself are attached hereto to provide proof of the pertinent facts concerning the refusal of the third co-inventor to join the present application.

The name and last known address of the co-inventor refusing to sign is as follows:

Daniel R. Smith  
39348 Polo Club Drive, Apt. 204  
Farmington Hills, MI 48335

The invention was developed by the co-inventors, Michael J. Neal, Doug Dietz, and Daniel R. Smith, within the scope of their employment while they were employed as engineers by BH Thermal Corporation. Daniel R. Smith subsequently ceased employment with BH Thermal Corporation. Daniel R. Smith refuses to take any action beneficial to BH thermal Corporation including joining the present application and assigning the invention, patent application, and any patent which issues thereon to BH Thermal Corporation. The other two co-inventors joined the present application and expressly assigned all rights to the invention, patent application, and any patent issuing thereon to BH Thermal Corporation, Inc. A copy of the Assignment is attached.

Upon information and belief, based on the precedent which is discussed below, BH Thermal Corporation is entitled to clear title to the invention, patent application, and any patent which issues thereon.

The Supreme Court of the United States in *Solomons v. U.S.*, 26 Ct. Cl. 620, 137 U.S. 342, 346 11 S. Ct. 88, 34 L. Ed. 667 (1890), held:

If one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish becomes, when accomplished, the property of the employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer.

It is clear that an employee who is paid to develop an invention comes within the scope of the language cited.

Because each of the co inventors, including Daniel R. Smith, were employed to invent by BH Thermal Corporation at the time the present invention was developed, the invention belongs to BH Thermal Corporation and each individual co-inventor, including Daniel R. Smith, who

contributed to the development of the invention, has a duty to jointly execute an application for patent covering the invention and to assign the invention, patent application, and any patent which issues thereon to BH Thermal Corporation

This petition for filing by other than all the inventors under 37 C.F.R. 1.47(a) was filed on January 7, 2005. In a Decision On Petition mailed March 8, 2005, this petition was dismissed because proof of a bona fide attempt to present a copy of the application papers to the nonsigning inventor for signature was not provided.

Subsequent to receiving the Decision On Petition, a complete copy of the application papers (specification, including claims and drawings, and declaration) were mailed via certified mail to the Mr. Smith along with a request for execution of the application papers. The application papers were mailed to the last known address identified above. In a subsequent telephone call, Mr. Smith confirmed receipt of the application papers and orally made an express refusal to sign the application papers.

In view of the oral express refusal of co-inventor Daniel R. Smith to execute the application papers required for filing the present patent application, co-inventors Michael J. Neal and Doug Dietz are believed to be entitled to make such application on behalf of and as agent for their co-inventor Daniel R. Smith.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-2326.

Respectfully submitted,  
PORTER, WRIGHT, MORRIS & ARTHUR LLP

May 4, 2005



Richard M. Mescher, Reg. No. 38,242  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215-6194

ASSIGNMENT

Whereas, we, **Michael J. Neal, Doug Dietz, and Daniel R. Smith** have jointly invented a certain new and original invention for a "**GAS CYLINDER WARMER WITH VARIABLE WATTAGE HEATER**", for which we are submitted U.S. Patent Application Number 10/828,836 on April 21, 2004 (Porter, Wright, Morris & Arthur Docket No. 1505800-050745);

And whereas, **BH Thermal Corporation** a corporation duly organized and existing under the laws of the state of Delaware and having a principle place of business at 1055 Gibbard Avenue, Columbus, Ohio 43201, is desirous of acquiring the entire right, title and interests in, to and under said invention and said patent application, any continuing applications, continuations-in-part, divisional applications, refiled or reissue applications made in the United States of America and all other Nations which may result from said invention and information disclosed in said application, and any and all patents which may be issued therefrom;

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, we, **Michael J. Neal, Doug Dietz, and Daniel R. Smith**, do hereby sell, assign and transfer to **BH Thermal Corporation**, the entire right, title and interest, in and to our invention of a "**GAS CYLINDER WARMER WITH VARIABLE WATTAGE HEATER**", said application for patent, the invention therein described, and all rights appurtenant thereto and in all our applications related thereto, including each of the following: the right to apply for any patent for said invention in the United States of America and in any and all other nations, any and all other applications for patent on said invention including all divisional, renewal, substitute and continuation applications based in whole or in part upon said invention or upon said application or related thereto; any and all patents that may issue theron in the United States and other Nations and any and all reissues, extensions, renewals, divisions, or continuations of patents granted for said inventions or upon said applications, to the full end of the term or terms for which said patent may be issued; and every priority or other right accorded by every international convention, treaty or agreement that is or may be predicated upon or arise from said invention, application and other applications or patent therefor, all to be held and enjoyed by **BH Thermal Corporation**, its successors and assigns, all the same as we would have held and enjoyed had this Assignment not been made.

We hereby authorize and grant the right to **BH Thermal Corporation**, to file and prosecute patent applications in any or all countries on all or any part of said invention in our names or in the name of **BH Thermal Corporation**, or otherwise, as **BH Thermal Corporation** may deem advisable under any international convention, treaty, or agreement or otherwise.

We hereby request and authorize the Commissioner of Patents and Trademarks of the United States and the empowered officials of all other countries to grant, issue and

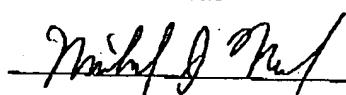
transfer any patent for said invention to **BH Thermal Corporation** as assignee of the entire right, title and interests therein, in accordance with this instrument of assignment.

We hereby represent and warrant that there are no outstanding rights or interest inconsistent with the rights and interests granted herein; we covenant that we will not execute, grant, or transfer any rights or interests inconsistent herewith, we bind ourselves, our heirs, executors, administrators and legal representatives to execute and deliver to **BH Thermal Corporation**, its successors and assigns, any further documents or instruments and to perform any and all acts that may be deemed necessary to enable it, its successors and assigns, to file patent applications for patents for said invention in any country in which it may elect to file such application, and to vest in **BH Thermal Corporation**, its successors and assigns, the title herein conveyed and intended to so be, and to enable such title to be recorded in the United States and each Nation in which each such application may be filed so that any patent issued thereon shall be issued to **BH Thermal Corporation**, its successors and assigns; and we further covenant and agree, for ourselves and our executors, administrators and legal representatives, that we and they will, upon request, communicate to **BH Thermal Corporation**, its successors and assigns, any facts relating to said invention and the history thereof, known to us or them and that we and they will testify as to the same in any proceeding, interference or litigation when requested to do so by **BH Thermal Corporation**, its successors and assigns.

First Inventor:

**Michael J. Neal**

Inventor's Signature:



Date Signed:

12/08/04

Second Inventor:

**Doug Dietz**

Inventor's Signature:



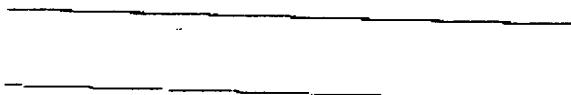
Date Signed:

12/08/04

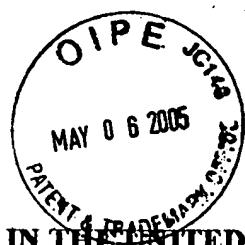
Third Inventor:

**Daniel R. Smith**

Inventor's Signature:



Date Signed:

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****Inventors:** Michael J. Neal, Doug Dietz, and Daniel R. Smith**Serial No.:** 10/828,836**Filing Date:** April 21, 2004**Title:** "GAS CYLINDER WARMER WITH VARIABLE  
WATTAGE SELF-REGULATING HEATER"**Attorney Docket:** 1505800-050745**Statement of Facts UNDER 37 C.F.R. 1.47(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

1. I, Domenic Federico, am President and CEO of BH Thermal Corporation, a corporation of the state of Delaware, having a principle place of business at 1055 Gibbard Avenue, Columbus, Ohio 43201.
2. The subject of the above-identified patent application, as well as U.S. provisional patent application 60/464,833 filed on April 22, 2003, was invented by Michael J. Neal, Doug Dietz and Daniel R. Smith while each were employed at BH Thermal Corporation and was invented within the scope of their employment.
3. Each of the inventors, Michael J. Neal, Doug Dietz and Daniel R. Smith, are obligated by employment agreements to assign the subject of the above-identified patent application to BH Thermal.

4. Between the date of filing the provisional application (April 22, 2003) and the date of filing the above-identified patent application (April 21, 2004), Mr. Smith resigned from his employment as Vice President-Engineering at BH Thermal Corporation. Mr. Smith left employment at BH Thermal Corporation on less than favorable terms.

5. Mr. Smith explicitly stated to me that neither I, nor anyone else at BH Thermal Corporation, were to contact him for any reason whatsoever. He also expressly stated that he would do absolutely nothing further to help BH Thermal Corporation.

6. I interpret the conduct of Mr. Smith as a clear indication that he is refusing to join the above-identified patent application. In view of Mr. Smith's actions/non-actions, it makes no sense to continue efforts to have Mr. Smith join the above-identified patent application or provide an express refusal.

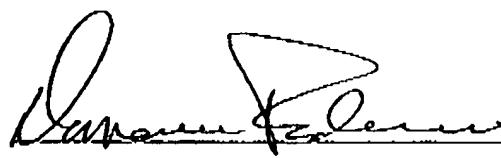
7. The last know address of Mr. Smith is 39348 Polo Club Drive, Apt. 204, Farmington Hills, MI 48335.

8. Mr. Neal and Mr. Dietz have timely signed declaration and assignment documents.

9. BH Thermal Corporation must respond to a Notice of Missing Parts mailed July 8, 2004 for the above-identified patent application, and it is therefore necessary to immediately file this patent application with less than all the inventors in order to protect BH Thermal Corporation's legitimate rights in the United States and foreign countries and to prevent irreparable damage to BH Thermal Corporation.

10. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true and I understand that will false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing therefrom.

Respectfully submitted,



December 29 2004

Domenic Federico  
President/CEO  
BH Thermal Corporation  
1055 Gibbard Avenue  
Columbus, OH 43201



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Michael J. Neal, Doug Dietz, and Daniel R. Smith

Serial No.: 10/828,836

Filing Date: April 21, 2004

Title: "GAS CYLINDER WARMER WITH VARIABLE  
WATTAGE SELF-REGULATING HEATER"

Attorney Docket: 1505800-050745

**Statement of Facts UNDER 37 C.F.R. 1.47(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

1. I, Richard M. Mescher, am a registered U.S. patent attorney having registration number 38,242.
2. I represent the BH Thermal Corporation, a corporation of the state of Delaware, having a principle place of business at 1055 Gibbard Avenue, Columbus, Ohio 43201, with regard to the above-identified patent application.
3. On March 16, 2005, I mailed via certified mail to Daniel R. Smith a complete copy of the application papers (specification including claims and drawings and a declaration) along with a request to execute and return the application papers. The application papers were addressed to Daniel R. Smith at 39348 Polo Club Drive, Farmington Hills, Michigan, 48335. A copy of the cover letter is attached hereto.

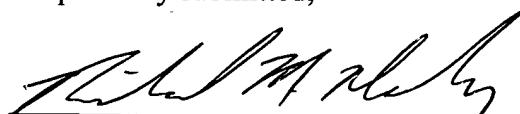
4. I received a signed receipt indicating that the application papers were received on March 18, 2005. A copy of the signed receipt is attached hereto.

5. On March 28, 2005, I attempted to telephone Mr. Smith at telephone number 248-888-0343 to confirm that he received the application papers and to find out his intentions regarding executing and returning the application papers. No one answered the phone so I left a voice message requesting that he return my call.

6. During a telephone call on March 29, 2005, Mr. Smith orally stated to me (while he was at Farmington Hills, Michigan and I was at Columbus, Ohio) that he received the application papers and that he refused to execute the patent papers unless BH Thermal made a cash payment to him. He stated that he wanted the cash payment because it is "standard practice" for "companies" to pay awards to inventors as a thank-you when a patent application is filed. I explained to Mr. Smith that BH Thermal owns all rights to the invention because it was conceived and reduced to practice within the scope of his employment as an engineer. I also told Mr. Smith that BH Thermal does not have a policy for making such payments to employees for filing patent applications and that BH Thermal has no obligation to make any such cash payment. He maintained his position and I indicated that I would inform BH Thermal of his position.

8. All statements made herein of my own knowledge are true and all statements made herein on information and belief are believed to be true and I understand that will false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing therefrom.

Respectfully submitted,



Richard M. Mescher, Reg. No. 38,242

Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215-6194

May 3, 2005



**PORTER WRIGHT MORRIS & ARTHUR LLP**  
Attorneys & Counselors at Law

Richard M. Mescher  
614-227-2026  
rmescher@porterwright.com

41 South High Street  
Columbus, Ohio 43215-6194

Facsimile: 614-227-2100  
Toll Free: 800-533-2794

March 16, 2005

*Via certified mail*

Daniel R. Smith  
39348 Polo Club Drive  
Farmington Hills, MI 48335

Re: U.S. Patent Application for "GAS CYLINDER WARMER WITH  
VARIABLE WATTAGE SELF-REGULATING HEATER"  
Inventors: Michael J. Neal, Doug Dietz, and Daniel R. Smith  
Our Ref.: 1505800-050745

Dear Mr. Smith:

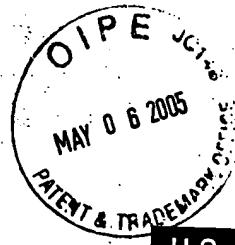
We represent the BH Thermal Corporation in intellectual property matters and understand that you are one of the co-inventors of the above-identified invention which was developed while you were employed at the BH Thermal Corporation. We need your signature on the enclosed Declaration and Power of Attorney and Assignment documents in order to proceed with the patent application. Please review the enclosed patent application along with the documents and, if acceptable, sign the documents where indicated. We have enclosed a preaddressed envelope for returning the signed originals to me for filing with the United States Patent and Trademark Office.

Please call me at the toll free number of 1-800-533-2794 ext 2026 if you are unable to promptly return the signed documents for any reason or if you have any questions with regard to this matter. I thank you in advance for your cooperation in this matter.

Very truly yours,

Richard M. Mescher

Enclosures



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**Sent To**  
 Daniel R. Smith  
 Street, Apt. No.;  
 or PO Box No.  
 City, State, ZIP+4  
 Farmington Hills MI 48335

PS Form 3800, June 2002      See Reverse for Instructions

<b>UNDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<p>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> <i>Daniel R. Smith</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery  <i>3-18-05</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes    If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">Daniel R. Smith    39348 Polo Club Drive    Farmington Hills MI 48335</p> <p style="text-align: center;">10/828, 836</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number  <i>(Transfer from service label)</i></p> <p style="text-align: center;">7003 2260 0000 2523 8860</p>			

PS Form 3811, February 2004      Domestic Return Receipt      102595-02-M-1540